No. 2411.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

EDWARD STROECKER, as Trustee of the Estate of H. J. Patterson, a Bankrupt,

Appellant,

vs.

MARIAM A. PATTERSON and H. J. PATTERSON,

Appellees.

BRIEF ON BEHALF OF APPELLANT

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Filed this .....*day of September, 1914.*

....., *Clerk.*

By ....., *Deputy Clerk.*

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The Case.

This is an action instituted by plaintiff, as Trustee for the creditors of H. J. Patterson, a Bankrupt, against H. J. Patterson and Mariam A. Patterson, his wife, to set aside an alleged fraudulent conveyance made by H. J. Patterson to Mariam A. Patterson, his wife, on November 27, 1911, wherein H. J. Patterson transferred to said Mariam A. Patterson, his wife, an undivided one-fourth interest in and to Placer Mining Claim known as the DALY BENCH, situate, lying and being in the second tier of benches on the left limit of Ester Creek, opposite Creek Placer Mining

Claim No. Three (3) below Discovery on Ester Creek, in the Fairbanks Recording Precinct, Territory of Alaska; and to restrain the defendants from demanding and receiving from a lessee of said ground, five per cent. (5%) of the gross output thereof, claimed by plaintiff as moneys due to the defendant H. J. Patterson, a bankrupt, under and by virtue of a certain sublease from said Patterson to H. C. Hamilton, executed prior to the filing of the petition in bankruptcy by said H. J. Patterson.

On May 11, 1912, the plaintiff filed a complaint in the District Court for the Fourth Judicial Division, Territory of Alaska, alleging that the defendant H. J. Patterson was adjudged a bankrupt by said court on April 16, 1912, and that plaintiff was regularly appointed Trustee for the creditors of said bankrupt on May 4, 1912, and that on November 27, 1911, the defendant H. J. Patterson was insolvent and owing various persons various amounts, in excess of thirty thousand dollars ($30,000.00); and that he did, on said day, with intent to hinder, delay and defraud his creditors, deed to the defendant Mariam A. Patterson, his wife, an undivided one-fourth interest in the DALY BENCH, on Ester Creek, and that prior to the time of said transfer to his said wife, H. J. Patterson was the owner of a lay or lease covering all of said DALY BENCH, and that prior to the commencement of said action and his adjudication in bankruptcy said H. J. Patterson transferred said lease to H. C. Hamilton; that certain royalties were accruing to the defendant H. J. Patterson under said

lease and were being claimed by Mariam A. Patterson, his wife, by reason of the transfer to her of the undivided one-fourth interest in said ground; and that said Mariam A. Patterson had no right, interest or title in or to said gold or gold dust, or any part thereof, and asking equitable relief (Tr. pp. 4-10).

On May 22, 1912, the separate answer of Mariam A. Patterson was filed, alleging ownership of said property and setting forth that she had acquired title thereto in the year 1910 by furnishing certain funds, with which a hole was sunk to bedrock for the purpose of doing assessment work on said ground for the year 1910, and denying that said transfer to her was in fraud of creditors (Tr. pp. 11-16).

On May 22, 1912, the separate answer of H. J. Patterson was filed, alleging in effect that prior to November 27, 1911, the legal title to said property had been in H. J. Patterson, but that Mariam A. Patterson was the equitable owner thereof, by reason of her furnishing certain funds in the year 1910, with which to perform certain work on the ground, in consideration of which the then owner of the ground was to transfer one-fourth interest to H. J. Patterson for Mariam A. Patterson (Tr. pp. 17-23).

On September 25, 1913, reply of plaintiff to the separate answer of the defendant H. J. Patterson, denying his affirmative allegations, was filed (Tr. pp. 23-24).

On September 25, 1913, reply of plaintiff to the separate answer of the defendant Mariam A. Patterson, denying the affirmative allegations contained in said separate

answer was filed (Tr. pp. 25-26).

On September 26, 1913, the action came on for trial before the Court, sitting without a jury, and was continued from day to day until plaintiff had concluded his case, whereupon a motion was made by the defendants to dismiss the action, and the action was dismissed (Tr. pp. 27-112).

On October 3, 1913, judgment of dismissal was entered by the Court (Tr. pp. 129-131).

On January 14, 1914, petition for appeal was filed by plaintiff (Tr. pp. 138-139).

On January 15, 1914, plaintiff filed his assignment of error (Tr. pp. 139-144).

On January 17, 1914, citation on appeal issued by the District Court for the Territory of Alaska, Fourth Division.

Assignment of Error.

The appellant herein relies upon the following error, viz:

1. The Court erred in granting the motion of defendants, at the close of plaintiff's case, to dismiss said action;

2. The Court erred in giving, signing and entering the judgment of date October 3, 1913, in the above entitled action, adjudging that the plaintiff was not entitled to the relief claimed in his complaint, or any part thereof, and that said action should be dismissed;

3. The Court erred in adjudging that the defendant Mariam A. Patterson was the owner of the gold dust,

or the proceeds thereof, of the value of five thousand one hundred seventy-four and 66-100 dollars ($5,174.66), which had been impounded to await the outcome of said action;

4. The Court erred in refusing to compel the defendants to proceed with their defense in said action;

5. The Court erred in permitting the defendant H. J. Patterson, over the objections of plaintiff, to testify on cross-examination in regard to any considerations for the deed from H. J. Patterson to Mariam A. Patterson, of date November 27, 1911, prior to the date of the execution thereof, for the setting aside of which said deed, on the ground of fraud, the above entitled action had been instituted;

6. The Court erred in failing to find that the gold dust that had been impounded, under stipulation of the parties to this action to await the outcome of said action, was the proceeds of the lay or lease held by H. J. Patterson, title to which passed to his Trustee after he was adjudged a bankrupt;

7. The Court erred in permitting the defendant H. J. Patterson, over the objection of plaintiff, to testify that the five per cent. (5%) royalty referred to in the transfer of the lease from Patterson to H. C. Hamilton, was the five per cent. (5%) which was to accrue to the quarter interest in the Daly Bench Claim, the title to which had been theretofore vested in H. J. Patterson, prior to the transfer thereof to his co-defendant, Mariam A. Patterson;

8. The Court erred in permitting defendants, over

plaintiff's objection, to introduce evidence concerning transactions had between the defendant H. J. Patterson and his co-defendant, Mariam A. Patterson, prior to the 27th day of November, 1911, concerning the considerations for said transfer of said date;

9. The Court erred in permitting the defendants, over plaintiff's objection, to offer in evidence defendants' Exhibit 3, same being an agreement dated September 19, 1910, by and between James Wickersham, of Fairbanks, Alaska, the party of the first part, and H. J. Patterson, of Ester Creek, Alaska, the party of the second part;

10. The Court erred in permitting the defendants, over plaintiff's objection, to introduce evidence concerning the agreement had between H. J Patterson and James Wickersham and work done thereunder, prior to November 27, 1911;

11. The Court erred in permitting the defendant, over plaintiff's objection, to introduce any evidence concerning the sinking of any holes to bedrock on the Daly Bench Claim, in the year 1910 or in the year 1911, prior to November 27, 1911;

12. The Court erred in permitting the defendant Patterson to testify, over plaintiff's objection, as to who caused the assessment work to be done on the Daly Bench Claim in 1910;

13. The Court erred in permitting any testimony concerning the business dealings between H. J. Patterson and Mariam A. Patterson, prior to November 27, 1911, and particularly in regard to where she secured the

money that was used to pay for the sinking of the holes on said Daly Bench Claim;

14. The Court erred in permitting defendants to introduce, over plaintiff's objection, defendant's Exhibit 4;

15. The Court erred in permitting the introduction of any evidence on the part of the defendant, over plaintiff's objection, of conversations had by the defendant H. J. Patterson with his co-defendant, Mariam A. Patterson, prior to November 27, 1911;

16. The Court erred in permitting the defendants to introduce, over plaintiff's objection, defendants' Exhibit 5;

17. The Court erred in permitting defendants to put in their case for the defense, under guise of cross-examination of the defendant H. J. Patterson, after he had been placed upon the stand as plaintiff's witness;

18. The Court erred in its finding in favor of defendants and against plaintiff, for the reason that the evidence was insufficient to justify same and said decision and judgment were contrary to law;

19. The Court erred in rendering judgment against plaintiff for defendants' costs incurred in said action;

20. The Court erred in permitting the defendant Patterson, over plaintiff's objections, to testify in substance as follows:

That the defendant Mariam A. Patterson paid for the assessment work on the Daly Bench for the year 1910, which assessment work was the consideration for the giving of the deed by James Wickersham to H. J. Patterson; that the deed was taken in the name of the de-

fendant H. J. Patterson as a matter of convenience; that he asked Judge Wickersham to make the deed to Mrs. Patterson; that Craig, who did the assessment work on the Daly Bench for the year 1910 was paid therefor by Mariam A. Patterson, as shown by defendants' Exhibit No. 5; that the money received by Mrs. Patterson for paying for such work was secured from H. J. Patterson and Delbert G. Hosler and was the proceeds of a note given by H. J. Patterson and Delbert G. Hosler in Dawson, Yukon Territory, on October 19, 1905, as shown by defendants' Exhibit 4; and that the defendant H. J. Patterson held said property in trust at the solicitation of the defendant Mariam A. Patterson; that said money so loaned to said defendant H. J. Patterson and Delbert G. Hosler was taken from a claim staked by Mariam A. Patterson in the Dawson country and was her separate money; that defendant Mariam A. Patterson kept the royalties and selling price of the property staked by her in the Dawson country as her own separate property;

Also, in permitting him to testify of his conversation with Fred Craig, in which he said: "Your money is ready for you whenever the work is finished. Mrs. Patterson is to have the quarter interest. I have a quarter interest for putting—a quarter interest for putting the drill holes down and a lease on all the ground" and "I says Mrs. Patterson will have the quarter interest for paying for the drill holes," all of which testimony was drawn from the witness on cross-examination and was improper cross-examination, for the reason that the mat-

ters inquired about were not gone into on direct examination, the only question asked of him concerning the consideration of the deed of November 11, 1912, being whether or not Mrs. Patterson paid him anything on that day (Tr. pp. 139-144).

Argument.

Section 489, Compiled Laws of Alaska, provides as follows:

> "Sec. 489. The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise, or inheritance shall not be subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to to the same extent and in the same manner that her husband can property belonging to him."

Section 497, Compiled Laws of Alaska, provides as follows:

> "Sec. 497. A married woman possessed of or owning any personal property or pecuniary rights may make a descriptive list of the same, and make and subscribe on the said list an oath that the property and rights therein described belonged to her at the time of her marriage, or that she has acquired the same by her own labor, or by bequest, inheritance, or by the gift of some person named other than her husband; and the list and affidavit shall be recorded in the register, and shall be prima facie evidence of the facts therein stated, and property not so registered shall be deemed prima facie to be the property of the husband rather than of the wife."

Section 439, Compiled Laws of Alaska, provides as follows:

> "Section 439. When property is owned by either

husband or wife, the other has no such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as herein provided."

Section 443, Compiled Laws of Alaska, provides as follows:

"Sec. 443. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise provided, they are not liable for the separate debts of each other, nor is rent or income of such property liable for the separate debts of the other."

Section 550, Compiled Laws of Alaska, provides as follows:

"Sec. 550. All deeds of gift, all conveyances, and transfers of assignments, verbal or written, of goods and chattels or things in action, made in trust for the person making the same, shall be void as against the creditors, existing or subsequent, of such person."

Section 556, Compiled Laws of Alaska, provides as follows:

"Sec. 556. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or of any rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded shall be void."

Section 559, Compiled Laws of Alaska, provides as follows:

"Sec. 559. The question of fraudulent intent in

all cases arising under the provisions of this code shall be deemed a question of fact, and not of law."

Section 560, Compiled Laws of Alaska, provides as follows:

"Sec. 560. The provisions of chapters thirteen, fourteen, and fifteen of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor."

I.

THE PLAINTIFF, AT THE CLOSE OF HIS CASE, HAD ESTABLISHED A PRIMA FACIE CASE, AND THE BURDEN WAS UPON THE DEFENDANTS TO ESTABLISH THAT THE TRANSFER FROM H. J. PATTERSON TO MARIAM A. PATTERSON WAS MADE (a) IN GOOD FAITH, (b) FOR A VALUABLE AND ADEQUATE CONSIDERATION, AND THE COURT ERRED IN DISMISSING PLAINTIFF'S ACTION.

Appellant established the following facts:

That in the month of September, 1910, H. J. Patterson entered into an oral agreement with James Wickersham, the owner of the DALY BENCH, whereby said Wickersham agreed that if H. J. Patterson would "bore, dig or excavate *one* hole to bedrock" on said claim, for the purpose of doing the assessment work on said claim for the year 1910, said Wickersham would deed to said H. J. Patterson an undivided one-quarter interest in and to said claim (Tr. pp. 82-83), and that said Patterson was to have a lay or lease on said ground when said work was completed;

That thereafter, and on September 19, 1910, said agreement was reduced to writing and the terms and conditions of the lay under which said Patterson was to work were explicitly set forth (Tr. pp. 121-128);

That said lease particularly provided as follows:

> "In consideration of the sinking of *a hole from the surface to bedrock thereon*, for the purpose of prospecting said ground and determining its value, by the party of the second part (Patterson), at his own expense, the party of the first part (Wickersham) does hereby agree to make, sign and deliver to the party of the second part his quit claim deed to an undivided one-quarter interest in said premises; the party of the second part undertakes hereby, in consideration of said agreement and transfer, to sink said hole upon the said premises and to do the assessment work for the year 1910, without any expense whatever to the party of the first part" (Tr. p. 122).

Also:

> "To enter upon said demised premises, within a reasonable time after the signing and sealing of these presents, and to dig, excavate, bore or otherwise sink *one hole from the surface to bedrock upon said claim,* for the purpose of prospecting said ground and doing the assessment work for the year 1910" (Tr. p. 123).

Also:

> "And the party of the second part further agrees to enter upon said premises within a reasonable time after the signing of these presents and proceed to work the same in a minerlike manner, with due regard to the development, preservation and value of said demised premises * * * to work and mine said demised premises steadily and continuously from the date hereof until the termination of this lease," etc. (Tr. pp. 123-124).

In pursuance of said agreement, Patterson performed the assessment work and the conditions for obtaining title, by drilling *one* hole to bedrock, at a depth of one hundred feet, at an expense of one hundred dollars ($100.00), said drilling costing one dollar ($1.00) per foot (Tr. p. 82).

Thereafter Patterson caused a *second* hole to be put to bedrock, to a depth of one hundred and twenty-five feet (Tr. p. 56), and the prospects not being satisfactory, abandoned the lease and went to work elsewhere (Tr. p. 62).

In 1911, Wagner, Beegler, Wichman and Wheeler asserted ownership of the greater portion of the DALY BENCH, by reason of their ownership of the HAPPY HOME Association Claim, located in 1908, adjoining the DALY BENCH and overlapping the same (Tr. p. 59), and when Wickersham returned to Fairbanks they were in possession of the ground, and after some negotiations the difficulties were adjusted, and on November 8, 1911, an agreement of compromise was entered into by and between Wagner, Wichman, Wheeler and Beegler, owners, and E. M. Horner, lessee of the HAPPY HOME Association Claim, the parties of the first part, and James Wickersham and H. J. Patterson, the parties of the second part, adjusting lines between said properties and settling all matters in dispute between the rival claimants for the ground (Tr. pp. 92-95), and reciting:

> "And in consideration of the conveyance to them (Wagner and associates) of seventy-five feet strip hereinafter made by the parties of the second part

to the parties of the first part, the parties of the first part do hereby sell, assign, set over and quit claim to the parties of the second part, in the proportions as they now claim the same, the whole of the ground within the said PAT DALY Claim, as shown in said C. E. Davidson survey of September 29, 1911; and in consideration of such conveyance to them, the parties of the second part do hereby sell, assign, set over and quit-claim to the parties of the first part, in the proportions as they now claim the same, a strip of ground off the upper end of the PAT DALY Claim, running up and down the general course of Ester Creek * * *. The parties of the second part agree that the parties of the first part may permit the water and tailings from the said seventy-five foot strip and the land immediately adjacent and above, where said E. M. Horner is now working, to flow upon said DALY Claim," etc. (Tr. p. 94).

This agreement was filed for record November 10, 1911, in the office of the Recorder for Fairbanks Recording Precinct.

On October 12, 1911, James Wickersham executed another lease to H. J. Patterson, covering the whole of the DALY BENCH, which said lease (Tr. pp. 112-121) contains, among other provisions, the following:

"That the party of the first part is the owner of an undivided three-fourths interest in and the party of the second part is the owner of an undivided one-fourth interest in that certain mining claim known as the DALY BENCH, situate," etc. (Tr. pp. 112-113).

Also:

"That the party of the second part has applied for and the party of the first part hereby gives to

the party of the second part a lease upon said claim, in consideration of the terms and covenants of this lease, and also in consideration of the terms and agreements contained in that certain other contract, signed between these parties at the same time as this lease, which other agreement is as much a part of this agreement of lease as if written in its body. In consideration of the rents, royalties, covenants and agreements hereinafter reserved and by said party of the second part to be kept, paid and performed, and in consideration of the performance of the other mentioned agreement, of even date herewith, the party of the first part does hereby grant, demise, let and lease unto the second party, the party of the second part does hereby accept the lease of the whole of said premises, together with all appurtenances and the right and privilege to prospect and mine the same and to extract therefrom all the gold and gold bearing placers therein contained, subject to the terms of this agreement" (Tr. p. 113).

Said lease was from date thereof until October 12, 1915. Said lease also contains the following paragraph:

"As part consideration of this lease the party of the second part agrees that *his undivided one-fourth* interest in said premises shall be covered and included in the terms of this lease and *shall also at all times be subject to the debts, defaults or damages resulting from the working under this lease, or for violation thereof, and the said Daly claim shall at all times be worked and considered as a whole between the parties hereto*, and all subject to the terms of this lease; and it is especially agreed that the *party of the first part* shall have a *first lien upon the whole of the output of the whole of the Daly claim, including the undivided one-fourth interest of the party of the second part* for the payment of the royalty reserved to the party of the first part and the performance of the terms of this lease" (Tr. p. 114).

Patterson also agreed:

> "To enter upon the said demised premises wit(hin?) thirty days after the signing of these presents and begin and thereafter continuously maintain possession and mine the said mining claim in a good and minerlike manner with due regard to the development, preservation and value of the same as a mining claim," etc. (Tr. pp. 114-115).

And:

> "The party of the second part further agrees that his undivided one-fourth interest shall be held liable to the party of the first part for all liens or other claims made or adjudged against said property which shall in any way become a charge upon the interest of the party of the first part" (Tr. p. 116).

Also:

> "And the party of the second part does hereby specially agreed not to assign this lease or lay or any interest therein or thereunder and not to sublet or sublease said demised premises or any part thereof; *nor to permit the same nor any part thereof nor any interest therein to pass to any other person whatever without the written consent of the party of the first part had and obtained, and this prohibition shall extend to the undivided one-fourth interest belonging to the party of the second part* as fully as to the interest belonging to the party of the first part" (Tr. p. 118).

Said lease was filed for record on the 10th day of November, 1911, in the office of the Recorder of Fairbanks Recording District (Tr. p. 121).

The conditions of the lease were discussed between H. J. Patterson and his wife, both previous and subsequent to the execution thereof (Tr. pp. 96-97).

On October 14, 1911, James Wickersham made, exe-

cuted and delivered to H. J. Patterson a deed conveying to said Patterson an undivided one-fourth interest in and to the DALY BENCH (Tr. pp. 86-87), and said deed was filed for record by H. J. Patterson on November 10, 1911, in the office of the Recorder of Fairbanks Precinct. Said deed contains the following recital:

> "Said conveyance is made in consideration of the doing of the assessment work thereon by the vendee in the year 1910, in compliance with the United States Statute" (Tr. pp. 86-87).

H. J. Patterson was mining on Engineer Creek and was indebted to various laborers and other creditors, for supplies furnished in the sum of over thirty-two thousand dollars ($32,000,00) Tr. p. 27). The only other property owned by said Patterson at said time was a lease or lay on the LAST CHANCE Association Claim on Engineer Creek, of unknown value, and certain personal property and accounts receivable, of the value of but a few thousand dollars and entirely insufficient to pay his indebtedness. He also owned undivided interests in certain placer association claims of no known value, and commonly called "wild cats" (Tr. pp. 28, 29, 30). In the summer of 1911, pay had been struck on the HAPPY HOME Association Claim, just above the DALY BENCH, and the DALY BENCH Claim had a market value of approximately ten thousand dollars ($10,000.00) (Tr. pp. 32-33), and stood a chance of having considerably greater value. During the summer of 1911, after pay had been struck by Horner & Company, lessees of the HAPPY HOME, Patterson told John R. Junkin,

one of his employes, that he owned a quarter interest in the DALY BENCH "just by where Horner struck the pay" (Tr. p. 101).

In the month of August, Patterson had another talk with his employe, Junkin, concerning the property, concerning which Junkin testified as follows:

> "He was talking about opening up that ground over there, and he talked to me about going over later in the season. Q. Did he say anything more? A. Well, first he asked me if I would go over and look after his interest there in the lay, if he should make final arrangements to carry the lay through. And afterwards he told me that he couldn't finance the lay, but he asked me if I wanted the lay. In fact I had asked him if I could have a lay on the upper end of the claim. He asked me if I could finance it, and I told him I could, and he promised to give me the lay, and later on he told me he couldn't give it to me. Q. Did you have any more conversations concerning that bench? A. Yes, he talked about it quite often. Afterwards, I think in the latter part of October, or early in November, one day Mr. Peoples was out there (interrupted) Q. What was Mr. Peoples' purpose there, if you know? A. I had an idea, but I didn't know for a fact. But Mr. Patterson did tell me that Peoples was out there and was pressing him for money. Q. Was what? A. Was pressing him for money. Q. Yes? *And he said if they kept on pressing him that he would put the Eva Creek property in his wife's name, and would let Mr. Peoples and the rest of his creditors do whatever they liked about it.* But he said that he would *guarantee the men's wages out of the Eva Creek property, provided he couldn't make the Last Chance Association lay pay.* Q. When you said 'Eva Creek property,' what property was mentioned? A. The Daly Bench. Q. Did he use the terms in-

terchangeably, the Eva Creek property and the Daly Bench? A. Sometimes he called it the Daly Bench and sometimes the Eva Creek property. Q. What did he say then? A. *I asked him why he hadn't it in his wife's name long ago if he expected they were going to make trouble for him. He said if he put it in his wife's name it would hurt his credit still further*" (Tr. pp. 102-103).

Mr. Junkin also testified that Mr. Patterson had told him that he had a lay on the whole bench and a quarter interest in the property—"a seventy-five per cent. lay on the whole bench besides—in addition to a quarter interest in the property" (Tr. p. 104).

In the month of November, Patterson was indebted to E. R. Peoples, a merchant of Fairbanks, in the sum of about four thousand dollars ($4,000.00), and on about the 15th of November, Peoples had received a check from Mr. Patterson for one thousand dollars ($1,000.00) and was unable to get it cashed (Tr. p. 105). Mr. Peoples ascertained that the transfer had been made from James Wickersham to Mr. Patterson of an undivided one-fourth interest in the DALY BENCH (Tr. p. 106) and asked Patterson to give him security on the DALY BENCH to insure the payment of his merchandise claim, and Patterson informed him that through an arrangement with Mr. Wickersham he couldn't give any security on the ground or transfer it in any manner (Tr. p. 107). Mr. Peoples testified in part as follows:

"Q. What did you say to him; remember, as near as you can, the words you used to him in asking for security? A. I suggested to him that he had a

quarter interest in that, and he should put it up as security (Daly Bench). Q. Did he deny that he had a quarter interest? A. No, sir. Q. The reason he gave you for not putting it up was that he had a written agreement—(interrupted). A. With Judge Wickersham. Q. (continuing)—with Judge Wickersham whereby he couldn't incumber it? A. Yes, sir" (Tr. pp. 107-108).

After the transfer was made, on November 27, 1911, by Patterson to his wife, Peoples instituted a suit against Patterson for the amount of his account, and thereafter instituted an action to set aside the conveyance to his wife, which action was abandoned after the Trustee in Bankruptcy was appointed (Tr. p. 108). On November 27, 1911, H. J. Patterson executed a sublease or assignment of the lease or lay held by him on the DALY BENCH to one H. C. Hamilton, transferred to Hamilton all his interest in the lay that he had from James Wickersham, reserving to himself five per cent. (5%) of the gross mineral output thereof (Tr. pp. 39-42). In the said assignment or sublease it is recited:

"That the said H. J. Patterson does hereby lease, demise and sublet unto the said H. C. Hamilton all of the placer mining claim above described, including all his right, title and interest therein held by the said H. J. Patterson as lessee of the said Wickersham *and in his own right as owner of an undivided one-fourth part of the title to said mining claim,* to have and to hold unto the said H. C. Hamilton for and during the term commencing this day and ending October 12, 1915" (Tr. p. 40).

subject to the terms of the Wickersham lease, and obligating Hamilton as follows:

"And (Hamilton) shall pay in addition thereto

> five per cent of the gross amount of each and every cleanup of gold and gold dust made by him upon said premises to the said H. J. Patterson" (Tr. p. 41).

On the evening of the same day, Patterson made and executed a deed from himself to Mariam A. Patterson (Tr. pp. 34-36), for the recited consideration of one dollar ($1.00) of "all his right, title and interest, being an undivided one-fourth interest of, in and to that certain bench placer mining claim, situate in Fairbanks Precinct, Alaska, on the left limit of Ester Creek, and known as the PAT DALY Bench Placer Mining Claim, etc. (Tr. p. 35). There is no assignment in said deed of the rents, issues and profits, and only the bare land is transferred, save and except that the *habendum* clause is as follows:

> "To have and to hold same, together with the appurtenances and improvements thereon, to and unto the said party of the second part, her heirs and assigns forever" (Tr. p. 35).

No assignment was ever made to Mariam A. Patterson of the lay or sublease between Hamilton and H. J. Patterson, nor were the rents, issues and profits, or any of the mineral products of said DALY BENCH assigned to the defendant Mariam A. Patterson.

At the time of the execution of deed to her, Mrs. Patterson was not present. The deed was prepared by Mr. Erwin, as attorney for H. J. Patterson, and filed for record by him, and Mrs. Patterson knew nothing of the execution thereof until the return of Mr. Patterson to Engineer Creek (Tr. pp. 98-99), and no consideration was paid by Mrs. Patterson to H. J. Patterson at the

time of the execution of said deed.

Prior to the assignment of the lease to Mr. Hamilton, H. J. Patterson had spent considerable money on the lay on the DALY BENCH, and *after the transfer to Hamilton, Patterson continued spending money in sinking a shaft on said ground, until the month of January, 1912, amounting in all to over fourteen hundred dollars* ($1,400.00) (Tr. pp. 99-100). None of this money was Mrs. Patterson's and all was expended by Patterson under his lease from Wickersham (Tr. p. 100). The lease was valuable at that time (Tr. p. 100), but Patterson alleges that there was no consideration for the assignment to Hamilton (Tr. p. 100).

On November 28, 1911, Patterson assigned to certain of his creditors the lease or lay held by him on the LAST CHANCE Association Claim on Engineer Creek (Tr. pp. 38-39).

The plaintiff alleged in his complaint (Tr. p. 7) that if the defendants were not restrained from demanding from Hamilton the royalties due under the lease with H. J. Patterson, said "defendants Mariam A. Patterson *and H. J. Patterson will demand and receive from said H. C. Hamilton said five per cent of said gross output.* unless restrained by this court," and that allegation is not denied by the answer of either defendant.

On April 16, 1912, more than *four months* after the execution of the deed by H. J. Patterson to his wife, said H. J. Patterson filed a voluntary petition in the District Court, Fourth Division, Territory of Alaska,

to be, and he was by said Court adjudged a bankrupt on April 16, 1912 (Tr. p. 4), and thereafter plaintiff, in the case at bar, was duly appointed Trustee for the creditors, qualified as such, entered upon the discharge of his duties, and instituted this action on May 11, 1912, to set aside the transfer from H. J. Patterson to Mariam A. Patterson, to have an adjudication of the Court that Mariam A. Patterson held the ground in trust for H. J. Patterson and his creditors, and to restrain the collection by the defendants of the royalties due from H. C. Hamilton, and for other relief (Tr. pp. 4-10).

After said H. J. Patterson was adjudged a bankrupt, while being examined before the Referee in Bankruptcy, he stated that he had caused the hole to be sunk to bedrock on the DALY BENCH in the year 1910 and had caused the assessment work to be done thereon, for which services he received a deed to an interest in the DALY BENCH (Tr. p. 79).

The plaintiff also established that said H. J. Patterson had worked several pieces of mining ground in the Fairbanks district and had made a failure of all of them but one, and in most cases, when he quit work, he was indebted to various persons (Tr. pp. 69-70-71-73-74), and lived on credit (Tr. p. 73).

The defendant H. J. Patterson was called as a witness for plaintiff, and upon cross-examination was permitted to testify, over plaintiff's objection, that in the year 1905, while H. J. Patterson and one Hosler were engaged in mining in the Dawson country, in the Yukon Territory, Mrs. Mariam A. Patterson staked a mining

claim in her own name, with the assistance of her husband (Tr. p. 66), and that from royalties received therefrom she loaned to her husband and Hosler the sum of five hundred dollars ($500.00), and took from said Patterson and Hosler their promissory note in the sum of five hundred dollars ($500.00) (Tr. p. 53); that in the year 1910 Patterson and Hosler were mining on Ready Bullion Creek, in the Fairbanks District, and from the proceeds of their mining operations, after a settlement between Patterson and Hosler, they each paid to her three hundred dollars ($300.00), which she deposited in bank (Tr. p. 75); and that afterwards and on September 21, 1910, she gave Fred Craig a check for two hundred twenty-five dollars ($225.00), to pay for the work he had done on the DALY BENCH under the agreement between Patterson and Wickersham, wherein Wickersham agreed that for the performance of one hundred dollars' worth of work he would give Patterson a deed to a one-fourth interest therein (Tr. pp. 56-57); and that the deed from Wickersham to Patterson of a one-fourth interest in said claim was in reality for her. Patterson admitted that his agreement with Mrs. Patterson was that she would sink *one* hole to bedrock and be entitled to a quarter interest in said DALY BENCH (Tr. p. 82). The note given by Hosler and Patterson and the check signed by Mrs. Patterson to Craig were both admitted in evidence over plaintiff's objection.

The explanation of the reason why H. J. Patterson had said note in his possession, after he alleged it had

been paid, was that in the summer of 1910 Hosler paid Mrs. Patterson three hundred dollars ($300.00) and Patterson deposited to her account in the Washington-Alaska Bank three hundred dollars ($300.00) a few days thereafter; that the note was delivered to Hosler, but was not marked paid, and when asked why it was not marked paid, he answered:

> "I don't know. We got up and went away and probably overlooked it. He didn't take it with him, something of that kind. Q. When did you get this from Hosler? A. When? Q. This note? A. It was left at the house. Q. I thought you said the note was delivered to Hosler when he paid. A. It was, right there. The settlement was in our cabin and in some way in taking his papers home the thing was left there somehow, I don't know. I noticed it afterwards and put it away with the papers" (Tr. pp. 75-76).

The above is a summary of the testimony that was given in behalf of the defendants under cross-examination of Patterson, except that Patterson was permitted, over the objection of the plaintiff, to testify in regard to statements made by him to Wickersham and to Craig and to recite conversations between himself and his wife, and he stated that he had informed Judge Wickersham that the quarter interest was for his wife, that she was paying for it, and that Judge Wickersham told him he could deed the property to his wife at any time (Tr. p. 62). But the testimony showed that by the terms of the lease accepted by said Patterson from Wickersham, in November, 1911, he expressly covenanted that the property should not be transferred to any person whomsoever,

without the written consent of Wickersham, and made the interest liable for the complete fulfillment of the term of said lease with Wickersham (Tr. p. 114).

It was admitted that Hosler"s attendance had not been secured to testify in the trial, nor was his deposition taken, although he was at Hot Springs, distant but one hundred miles from Fairbanks. Mr. Patterson was *not* sworn and no evidence of good faith of the transaction between himself and his wife was introduced, save and except as above set forth.

Plaintiff submits that he established a *prima facie* case, as it was only necessary for plaintiff to establish the fact of the transfer, the insolvency of the grantor at the time said transfer was made, and that existing creditors of the grantor were prejudiced by reason of said transfer, and the burden was then placed upon the defendants to establish the good faith of the transaction and that it was for a valuable and an adequate consideration.

Wright et al. vs. Craig et ux (Or.) 66 Pac. 807.

Marks vs. Crow (Or.) 13 Pac. 55.

II.

THE CONVEYANCE FROM H. J. PATTERSON TO HIS WIFE WAS VOLUNTARY FOR THE DIFFERENCE BETWEEN THE CONSIDERATION ACTUALLY PAID (IF ANY WAS PAID) AND THE VALUE OF THE PROPERTY CONVEYED.

A. & E. Encyc. of Law, 2d Ed. Vol. 14, p. 299;

Bullitt v. Worthington, 3 Md. Ch. 99;

Bates et al. v. McConnell et al., 31 Fed., 588.;

Clements et al. v. Nicholson et al., 6 Wallace

(U. S.) 316; 18 Law Ed., 786;

Mechem on Sales, Sec. 597;

Snyder v. Partridge (Ill.), 29 N. E., 851, 32 Am. St. R. 130;

Strong v. Lawrence (Ia.) 12 N. W., 74;

Norton v. Norton, 5 Cush. (Mass.) 524;

Church v. Chapin, 35 Vt., 223;

Robinson v. Steward, 10 N. Y., 189.

If Mrs. Patterson actually did pay one hundred dollars ($100.00) as a consideration for the transfer of the property to her, the most she would be entitled to receive from the proceeds of the sale of the land would be the amount of the consideration so paid, and the balance should be delivered to plaintiff for the payment of the debts of the bankrupt.

Wright et al. v. Craig et ux., 66 Pac. 807-810.

Lyon v. Zimmer, 30 Fed. 401-411.

Wright v. Shoudy et al. (Wash.), 42 Pac. 631.

III.

BY REASON OF THE CONFIDENTIAL RELATIONS EXISTING BETWEEN HUSBAND AND WIFE, TRANSACTIONS BETWEEN THEM, WHEREBY CREDITORS ARE INJURED, ARE CLOSELY SCRUTINIZED, AND THE BURDEN WAS ON MRS. PATTERSON TO ESTABLISH THAT THE TRANSACTION WAS IN GOOD FAITH AND FOR A VALUABLE AND ADEQUATE CONSIDERATION.

See:

Bank of Colfax v. Richardson (Ore.) 54 Pac., 359-366.

In Wright et al. v. Craig et ux., 66 Pac., 807, in an

action to set aside a conveyance as fraudulent, plaintiff established the insolvency of the defendant and introduced a deed from defendant to his wife, reciting a consideration of one dollar ($1.00), and also the judgment obtained against defendant, grantor. *Held* to make a *prima facie* case of fraud and to place the burden on the wife to show that she accepted the conveyance on a consideration and without intent to defraud her husband's creditors.

See also Marks v. Crow (Ore.), 13 Pac., 55, where the court required the grantees to establish by satisfactory proof that there was a valuable and *adequate* consideration for the deed.

See also 14 A. & E. Encyc. of Law, 2d Ed., 292.

In the case of Jennings v. Lentz (Ore.), 93 Pac., 327, the court holds that it has become a settled rule in that state that in suits in equity, the claim of a *bona fide* purchaser for value is an affirmative defense which must be pleaded, thereby placing the burden of proof, in such cases upon the party relying thereon. Id. 329.

In Helm v. Brewster et al. (Colo.), 93 Pac., 1101, the Court holds:

> "In an action by a creditor of a husband, to set aside conveyances to the wife, the burden is on the husband and wife to clearly establish that the transaction is honest, and without intent to hinder and defraud such creditor. A sale of property, though for a full consideration, made by the owner with intent to hinder, delay and defraud his creditors, if the vendee participated in such intent, is void as against such creditors. A grantor's intent to hinder, delay and defraud his creditors may be inferred from facts and circumstances."

In discussing the rule established in said case, the Court, by Gabbert, J., on page 1104, says the reason for the rule is that the relationship of husband and wife affords exceptional opportunities for the former to defraud his creditors by conveying his property to his wife, and as they are generally the only persons who know of the transactions between themselves, the rule may be even stronger than above indicated.

In the case of Stubling v. Wilson (Ore.), 90 Pac., 1011, the court holds: that where conveyance by a debtor to his brother is attacked as fraudulent to the creditor, the burden is on the *grantee* to prove that he purchased *without notice of the fraudulent intent* and for a valuable consideration.

In the case at bar, the evidence clearly shows that the defendant H. J. Patterson transferred his property to prevent his creditors from securing same, and *no attempt was made to prove that his wife was not cognizant of his fraudulent intent.*

In the same case, on page 1012, the Court, citing the case of Mendenhall v. Elwert, supra, says that the law will presume that such relative was aware of the fraudulent intent of the grantor, and proceeds to say:

> "By virtue of the relations of the parties, the fraudulent intent of the debtor being established, the transaction is looked upon with suspicion and *the burden is shifted and cast upon the grantee* to *allege and show consideration and want of notice*, the evidence of both of these matters being peculiarly within the knowledge and control of such grantee and not accessible to plaintiff, and *if not produced it*

will be considered as due to inability to show such facts."

In case of First. Nat. Bank of Albuquerque v. McClellan (New Mexico), 58 Pac., 347, the Court says (p. 349):

"The fact that the whole of the husband's estate is conveyed to the mother-in-law, who thereupon conveys to the wife, being shown, the *burden of proof was upon the wife to overcome the presumption of legal fraud arising therefrom,* and to show that the conveyance was for a *valuable* and *adequate* consideration out of her separate estate (citing authorities), *and she must go even further and show the good faith of the transfer."*

To the same effect:

Knapp v. Day (Colo.), 34 Pac., 1008.

In the case of Weber v. Rothchild (Ore.), 15 Pac., p. 650, on page 653, the Court says:

"Another rule of law equally elementary, which is frequently applied in such cases (fraudulent conveyances), is that when a fact is peculiarly within the knowledge of a party, he must furnish the necessary evidence of such fact.

In Mendenhall v. Elwert et al. (Ore.), 59 Pac., 805, it is held:

"Where a debtor conveys his property to a relative and his creditor sustains any loss in consequence thereof, such relationship imposes upon the parties to the conveyance the burden of showing that the transfer was made in good faith and for a valuable consideration."

The Court, further commenting on the case, says:

"Whatever the rule may be in regard to the burden of proof, in suits to set aside for fraud, conveyances executed by grantor who is not related to the grantee, the point insisted upon can have no ap-

plication to the case at bar, in which the *onus probandi,* by reason of such relation, is cast upon the defendants to show the *bona fides* of the several transactions and to supplement their testimony by the evidence which was more particularly within their knowledge and power to produce." Id. 808.

In Goodale v. Wheeler et al. (Ore.), 68 Pac., 753, the Court declares the rule herein contended for to be the rule by which the Supreme Court of Oregon is governed. Id. 756.

In Tibbets v. Terrill et al. (Colo.), 96 Pac., 978, it is held:

"The utmost fairness is required in dealings between husband and wife, so far as they affect the right of creditors, and they are ordinarily bound, whenever a transaction between them is impeached or attacked, to show in the fairest and most favorable light an honesty of purpose and an absence of all intent to hinder or defraud those who may be creditors of the husband."

See also:

Bump on Fraudulent Conveyances, pp. 282, 287, 288;

Ogden St. Bank v. Barker, 40 Pac., 765-767;

Gustin v. Mathews (Utah), 70 Pac., 402;

Judson v. Lyford (Cal.), 24 Pac., 286-288;

Callan et al. v. Statham et al., 64 U. S., 481;

16 Law Ed., 532.

Also see note 56 L R. A., 825;

Also Stevens v. Carson (Neb.), 9 L. R. A., 523.

Murray v. Shoudy (Wash.), 42 Pac., 631-632.

IV.

IF A MARRIED WOMAN DESIRES TO PRESERVE HER PROPERTY RIGHTS, SHE SHOULD TAKE REASONABLE CARE TO KEEP IT SEPARATE AND IN SUCH CONDITION AS NOT TO MISLEAD THOSE DEALING WITH HER HUSBAND.

Knowlton et al. v. Mish., 17 Fed. 198;

Humes, Assignee of Scruggs, Bankrupt, v. Scruggs et al., 94 U. S., 28; 24 Law Ed. 51.

In the case of Brown v. Whittington (Ore.) 64 Pac., 649-650, Bean C. J. says:

> "But whatever may have been the real facts in reference to the matter, the Coos County land was purchased by Whittington and the title taken in his own name. He was afterwards allowed and permitted to sell a portion thereof, mortgage the remainder and otherwise deal with it as his own, until after one of his neighbors, relying on the apparent fact that he was owner, became surety for him on the note to Brown. It would be manifestly inequitable and unjust, under such circumstances, to permit the conveyance as against such a surety to stand, unless clearly shown by the evidence to have been made and received in good faith."

In a case similar to the case at bar, where the wife claimed that she furnished, from her personal funds, the money with which to purchase a hotel, and permitted the husband to hold himself out to the world as the owner thereof, the court holds:

> "Where a husband, with the knowledge and consent of the wife, holds himself out to the world as the owner of property, and where the record title is allowed to remain in him, and he obtains credit by reason of such supposed ownership * * * the

proof of ownership in the wife should be most clear, satisfactory and convincing, *if indeed it can prevail at all against the rights of bona fide creditors.*"

Frederick et al. v. Shorey et ux. (Wash.), 29 Pac., 766-767.

In the case of McKinney et al. v. Ward et al. (Kan.), 18 Pac., 196, the Court says:

"If, however, it is once shown that, even if the property did belong to the defendant, she, in her dealings with her husband allowed him to use and control the property in such manner as to lead or induce a prudent business man to trust him upon the strength of such dealing and handling of property, then, in that case, she could not be heard to complain." Id. 197.

In the case at bar, that is precisely what Mrs. Patterson permitted her husband to do.

See also: Brummet v. Weaver, 2 Ore., 173-174.

V.

MINING PROPERTY ACQUIRED BY MRS. PATTERSON DURING COVERTURE IS NOT EXEMPT FROM SEIZURE FOR HER HUSBAND'S DEBTS, UNDER THE LAWS OF ALASKA.

Section 489, Compiled Laws of Alaska, holds that property acquired by a wife after marriage, by gift, devise or inheritance, shall not be liable for her husband's debts. The property from which the defendant Mariam A. Patterson is alleged to have received royalties, with which she paid for the work on the DALY BENCH, by reason of which she claims ownership thereof, was acquired by the location of a placer mining claim in the Dawson country, with the assistance of her husband. It

was not acquired by "gift, devise or inheritance" and was a *purchase*. *Purchase* is defined as "the acquisition of property by a party's own act as distinct from acquisition by act of law."

32 Cyc., 1266.

VI.

A MARRIED WOMAN CLAIMING PROPERTY PURCHASED AFTER MARRIAGE, IN OPPOSITION TO HER HUSBAND'S CREDITORS, MUST SHOW THAT THE CONSIDERATION WAS PAID OUT OF HER SEPARATE ESTATE. HER EARNINGS, WHILE COHABITING WITH HER HUSBAND, ARE NOT HER SEPARATE PROPERTY. SHE CAN HAVE THEM ONLY BY GIFT OF HER HUSBAND, AND SUCH A GIFT IS NOT PROTECTED AGAINST HIS CREDITORS.

Seitz v. Mitchell, 94 U. S., 580; 24 Law Ed., 179.

In the above case, the Court says:

> "Nowhere, so far as we are informed, has it been adjudged that her earnings, or the product of them, made while living with her husband *and engaged in no separate business,* are not the property of the husband when the rights of his creditors have been asserted against them." Id. Law Ed. 180.

In the case at bar, Mariam A. Patterson was living with her husband and was not engaged in separate business. The mining claim in question was not inherited by nor bequeathed to her, nor acquired as a gift from her husband.

VII.

WHERE THE DEED FROM H. J. PATTERSON TO HIS WIFE SET FORTH A CONSIDERATION OF ONE DOLLAR ($1.00), NO OTHER CONSIDERATION COULD BE PROVEN, AND IT WAS ERROR TO PERMIT INTRODUCTION OF EVIDENCE THAT MRS. PATTERSON PAID FOR THE WORK THAT WAS THE CONSIDERATION OF THE TRANSFER FROM WICKERSHAM TO PATTERSON, AND EVIDENCE AS TO THE SOURCE FROM WHICH THE MONEY WAS RECEIVED BY HER.

In Ogden St. Bank v. Barker et al. (Utah) 40 Pac., 765, the Court holds, in passing upon whether another or different consideration than that mentioned in the deed can be shown:

> "But an entirely different consideration from that expressed cannot be shown by parol evidence, when the deed is assailed by creditors, because this would be to vary the terms of a contract, the stipulations of which were reduced to writing by the parties. In the absence of mistake or fraud, the written instrument speaks for itself, and when attacked by creditors its stipulations are conclusive as to the grantor and grantee, and the instrument cannot be supported by falsifying its recitals, because they must be presumed to have been made and accepted deliberately and to express the intention of the parties thereto The law presumes that every man intends the necessary and natural consequences of his own acts, and where the proximate and natural results of a debtor's acts are to hinder, delay, or defraud creditors, it will be presumed that he intended his acts to produce such results. In the case at bar the consideration expressed in the deed is one dollar, and there is no other consideration mentioned or referred to in the consideration clause. The deed having been assailed by a creditor of the grantor on the ground that it was fraudulent and made to hinder and delay such

creditor in collecting his claims, its recitals were conclusive, and at the trial neither the grantor nor the grantee was entitled to show any other consideration than that contained in the instrument * * A voluntary conveyance of land made by a debtor while he is under embarrassed circumstances, is constructively fraudulent, and will be held void, as to existing creditors, without proof of actual fraud." Id. 766-767.

The Court in that case also holds that evidence to show another or different consideration than the consideration set forth in the deed cannot be considered nor regarded under the issues raised in the pleadings, and in the case at bar the Court erred in admitting or considering any evidence showing another or different consideration than that named in the deed.

VIII.

THE DEFENDANTS CONTEND THAT H. J. PATTERSON WAS IN REALITY HOLDING INTEREST IN THE GROUND IN DISPUTE, IN TRUST FOR HIS WIFE. THIS BEING THE CONTENTION, IT COULD NOT BE CREATED OR ESTABLISHED BY PAROL TESTIMONY.

Kalimowski v. McNeny et al. (Wash.), 123 Pac., 174.

IX.

THE PROVISIONS OF SECTION 560, COMPILED LAWS OF ALASKA, ARE NOT APPLICABLE WHERE THE ALLEGED FRAUDULENT TRANSACTION IS BETWEEN HUSBAND AND WIFE.

Under a law similar to the provision of the section above cited, the Supreme Court of Montana, in the case

of Lewis v. Lindley et al., 48 Pac., 765, holds as follows:

> "In an action to set aside a conveyance of land from husband to wife, in fraud of plaintiff's equitable rights, though the wife paid a valuable consideration, the burden was on her to show that she took without notice of plaintiff's rights; the rule causing such burden on her, not being affected by Comp. St 1887, Div. 5, Sec. 232, declaring that the provisions of the chapter (relating to conveyances) shall not impair the title of a purchaser for value, unless it appears that he had notice of the fraudulent intent of the grantor, or of the fraud, rendering the grantor's title void."

In the case at bar, it was not incumbent upon the plaintiff to establish a *prima facie* case, to prove that Mrs. Patterson had no knowledge of the fraudulent intent on the part of her husband, and the cases already cited declare such a transaction, under the circumstances of the case at bar, fraudulent, and plaintiff was not required to establish the actual fraud on the part of the defendant H. J. Patterson.

Thomson et al. v. Crane et al., C. C. Dist. of Nevada, 73 Fed., 327;

Brady et al. v. Irby (Ark.), 142 S. W., 1124; 30 A. & E. Anno. Cas., 1054;

Wilke v. Vaughan (Ark.), 83 S. W., 913.

X.

NO ASSIGNMENT WAS EVER MADE OF THE INTEREST OF H. J. PATTERSON IN THE LEASE TO HAMILTON, AND ALL ROYALTIES THAT ACCRUED TO PATTERSON WAS THE PROPERTY OF PATTERSON'S CREDITORS.

The transfer to Mrs. Patterson was of the bare legal

title to the ground and the deed did not contain the ordinary clause transferring the *"rents, issues and profits,"* and this provision being omitted, it can only be presumed that they were intentionally omitted, and as between the grantee and the creditors of grantor, we respectfully submit that any doubt should be resolved in favor of the creditors, especially in view of the suspicious circumstances surrounding the transaction and the gross inadequacy of the alleged consideration.

It conclusively appears that, taking grantor's own statements as true, all the moneys that were advanced by Mrs. Patterson for the purpose of doing the assessment work on the DALY BENCH in 1910, amounting to the sum of *one hundred dollars,* and the other one hundred and twenty-five dollars advanced by her was, under the terms of the contract between Patterson and Wickersham, *expended by said Patterson in prospecting the lay or lease he held on the ground,* and if anything, was a *loan* to him; that Patterson afterwards expended over *fourteen hundred dollars* on the lay, partially before he assigned it to Hamilton, and that he *continued expending money thereon for some two months after said assignment,* and as far as the record shows, Patterson expended at least *fifteen hundred and twenty-five dollars* on the lay, developing it and preparing the ground for work, as against the *one hundred dollars* alleged to have been advanced by Mrs. Patterson. They now ask that all the royalties now impounded in the District Court in Fairbanks, Alaska, amounting to *fifty-one hundred seventy-four and sixty-six one-hundredths dollars,* be

turned over to Mrs. Patterson as her money by reason of her expenditure of *one hundred dollars,* and that the creditors of said Patterson, who were lured into giving credit to Patterson, partially at least, upon the strength of his supposed ownership of an interest in the DALY BENCH, get nothing for the *fifteen hundred and twenty-five dollars* expended by Patterson.

Mrs. Patterson took the bare legal title, subject to the burdens then existing against it, to-wit, the payment of the royalties thereafter to accrue to the grantor, her husband.

Without in any manner waiving the point heretofore made in Par. VII., that the court erred in admitting or considering any evidence as to any other consideration for the alleged fraudulent deed other than that recited therein, to-wit, the sum of one dollar, yet appellant submits that, even if the objectionable testimony had been properly admitted, that the order of dismissal was erroneous, as the defendants failed to establish the essential elements of their defense: (a) good faith on the part of grantor (b) good faith in receiving the transfer on the part of the grantee, and lack of knowledge that the transfer was fraudulent and was intended to defraud or hinder grantor's creditors; (c) that grantee had paid a *valuable* and *adequate* consideration for said property; (d) that grantee had so conducted herself as not to mislead her husband's creditors, and (e) that her actions were not such as to constitute a dedication to her husband's creditors of whatever interest she may have had in the property.

It is submitted that the burden of proving the above matters cast upon the grantee is not met by the promiscuous admission of testimony of Patterson of statements alleged to have been made to, and supposed conversations had with, his wife, Judge Wickersham, and Craig the drill-man, all self-serving, and not overly burdened with the earmarks of probability, and, in our humble opinion, not susceptible of being "squared" with the physical and record facts, which latter were criterions by which his creditors could judge Patterson as a credit risk.

Truth is sometimes elusive when it relates to transactions between man and wife, especially when the man sees bankruptcy approaching and it becomes necessary to sequestrate a valuable asset to provide comforts along the financial pathway of the future until the overly-trusting creditors have had an opportunity to forget, or to become occupied in prying loose a few dollars from some other equally enterprising debtor imbued with the philosophy of that ever-growing school who believe in "letting the other fellow worry." Paradoxical as it may seem in this year of grace 1914, a woman's skirt is wide enough to effectually screen from view the acts and details relative to the change of title to a twenty-acre mining claim.

It is further respectfully submitted that the defendants have not established by clear, satisfactory or convincing testimony that the money that was used to pay for the assessment work on the DALY BENCH in 1910 was the property of Mrs. Patterson, and the story of

the manner in which she came to have money in bank is not such as would appeal to a court of equity, especially in view of the fact that the alleged note given by Hosler and Patterson turns up most opportunely in the possession of defendants; also that the principal evidence relied upon by the defendants to establish that the title to the ground in dispute was held in trust by Patterson for his wife consisted of self-serving declarations such as could not be contradicted by the plaintiff, and were used for the purpose of contradicting or varying the many contrary statements formerly made by Patterson in his various declarations in writing relative to the ownership of the mining property; and that he apparently succeeded in creating from thin air a title that was of greater dignity than that created by written instruments, duly recorded in order that his various creditors might ascertain his probable value as a credit risk.

Under the Code of Alaska, provision is made for recording instruments affecting title to real estate, and the various instruments affecting title, when once recorded, are presumed to be notice to the world of the contents thereof, and Mrs. Patterson was charged with full knowledge of his assertions of ownership, and as she acquiesced therein by her silence, she dedicated whatever interest she had in the property (if she ever had any) to the purposes for which her husband was so successfully using it, viz.: to get credit with laborers and merchants and to guarantee the fulfillment of the terms of his lease from his co-owner on the balance thereof.

As far as counsels' investigations have progressed,

we find no adequate means furnished by the machinery of the courts, or by the statutes of Alaska, for ascertaining the terms and conditions of clandestine agreements between husbands and wives, by the terms of which, if permitted to prevail, written titles are nullified, the recording laws become a mockery, and a court of equity, a clearing house for fraud. If this be equity, then the laws relative to the establishing and perpetuating of land titles in Alaska will be valueless so far as the transactions between husband and wife are concerned. Should the principle contended for by the defendants and given countenance by the order of the Court in the case at bar, a principle so iniquitous in its inception and so harmful in practice, be permitted to stand, no married man's credit based upon property holdings alone, nor bond given by him based upon property qualifications, as prescribed by law, would be other than a trap for the unwary; and if the married man chanced to be dishonest, deeds from and liens or mortgages upon real estate of a married man, who holds record titles to property, might become completely valueless should the wife of the grantor or mortgagor, with the connivance of the husband, see fit at any time in the future to assert title to said property, claiming that same was merely held in trust for her by her husband, and that she was the real owner thereof.

It is respectfully submitted that the rulings of the Court in the case at bar in the particulars hereinbefore assigned as error, are contrary to the principles of equity and the dismissal of the action was not justified by

the evidence.

Wherefore appellant prays that this appeal be allowed and the case be reversed.

McGOWAN & CLARK,
Attorneys for Appellant.

Dated Fairbanks, Alaska,

August ....., 1914.